

COMMITTEE FOR IDAHO'S HIGH DESERT

IBLA 95-578

Decided sEPTEMBER 19, 1995

Appeal from, and petition for stay of, a decision of the Manager, Snake River Resource Area, Bureau of Land Management, to burn woodlands. EA ID-020-95-060

Stay denied; appeal dismissed.

1. Federal Land Policy and Management Act of 1976: Land-Use Planning--Rules of Practice: Appeals: Standing to Appeal--Rules of Practice: Appeals: Stay

A request for stay is denied and the underlying appeal is dismissed because an association seeking to appeal a BLM decision to burn woodlands was not a "party to a case" under 43 CFR 4.410(a) and therefore lacked standing to appeal after officers of the association declined to participate in BLM planning prior to issuance of a decision although invited to do so.

APPEARANCES: Sheldon Bluestein, Board Member, Committee for Idaho's High Desert, Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Committee for Idaho's High Desert (Committee) has appealed from a June 19, 1995, decision of the Manager, Snake River Resource Area, Bureau of Land Management (BLM), to burn approximately 3,300 acres of pinyon-juniper woodland during the summer or fall of 1995. The decision is based upon a decision record, finding of no significant impact, and environmental assessment (EA) No. ID-020-95-060. The EA recites that it was prepared to implement objectives of the Cassia Resource Management Plan. Three separate burns of approximately a thousand acres each are planned, in reliance upon the planning analysis made by the EA, in T. 16 S., Rs. 21 and 22 E.: Tps. 14 and 15 W., R. 25 E.: and T. 15 S., Rs. 25 and 26 E., Boise Meridian. Together with a timely notice of appeal, the Committee filed a stay petition pursuant to 43 CFR 4.21 on July 20, 1995.

The petition alleges that BLM's planning for the three burns violates regulations codified at 40 CFR 1500 through 1508, implementing the National Environmental Policy Act of 1969. Contending that it will likely succeed on the merits of its appeal, so as to be entitled to a stay of the burn

project pending appeal under 43 CFR 4.21(b)(ii), the Committee argues that the EA prepared by BLM failed to adequately analyze the effects of the proposed action, did not objectively evaluate alternatives, considered only two alternatives while ignoring others that should also have been considered, did not analyze changes in livestock management, and provided for no public comment period.

Alleging that notice of the proposed action by BLM was inadequate and that this circumstance has adversely affected the ability of the Committee to represent the interests of its membership in this case, the Committee states that it was surprised by issuance of the burn EA in its present form and has "had no opportunity to voice its issues and concerns--and these issues and concerns were either not addressed or resolved by the EA." The record before us on appeal does not, however, support this contention.

The record shows that BLM first telephoned Russ Heughins, the Committee's chairman, about the burn project during the week of February 19, 1995, to invite him to participate in the preparation of a burn EA, but that Heughins declined the offer because the burn sites and BLM offices concerned were too distant from Boise, where he was located. By letter on the Committee's letterhead dated May 13, 1995, Pam Marcum inquired about the burn proposal, and on May 31, 1995, in response to her inquiry, BLM employee Ken Knowles discussed the status of the still incomplete EA during a telephone call with Mary Watson, a Committee member, who took his call for Marcum. Knowles informed Watson of the status of the EA, invited her to submit the Committee's comments on the EA, described the location and purpose of the burns under consideration, and offered to give members of her organization a tour of the area proposed to be burned. Watson did not accept the offer, but requested that a copy of the completed EA be sent to Marcum. On June 20, 1995, a copy of the EA completed on June 19, 1995, was mailed to Pam Marcum, as requested. This appeal was then filed on July 20.

[1] The Committee has not explained why this amount of prior notice was inadequate to permit them to participate in planning for the burn EA. Instead, the record of dealings between BLM and various members of the Committee shows the Committee lacks standing to appeal because it declined to participate in the decisionmaking process concerning these distant sites until after planning was complete and a decision had issued. To have standing to appeal a BLM decision, one must not only be adversely affected, as the Committee now claims to be, but one must also have participated so as to be a "party to a case" as that term is used by 43 CFR 4.410(a). See Edwin H. Marston, 103 IBLA 40, 41 (1988).

The cited appeals regulation provides that appeals may be taken only by "[a]ny party to a case who is adversely affected by a [BLM] decision." To be a party to a case, one must have participated in the decisionmaking process prior to the decision that is sought to be appealed. Edwin Marston, 104 IBLA at 42. In this case, however, the record makes clear

that several members of the Committee declined, on behalf of the Committee, to participate in planning for these three burns in the Snake River Resource Area and voiced no comments about the proposal until after planning had ended in a decision by BLM. As a consequence of their decision to remain aloof from the planning process, the Committee cannot now be heard to complain about concerns they were unwilling to express before a decision issued.

The Committee has failed to justify issuance of a stay, inasmuch as the record presented for review by their petition for stay shows they have no likelihood of success on the merits of their appeal because they lack standing to appeal under 43 CFR 4.410(a).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for stay is denied and the appeal is dismissed.

Franklin D. Amess
Administrative Judge

I concur.

David L. Hughes
Administrative Judge

